

NO. 46459-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RYAN JACOB SCHECHERT,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 13-1-01046-0

SUPPLEMENTAL BRIEF OF RESPONDENT

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DATED August 7, 2015, Port Orchard, WA 5.

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**I. COUNTERSTATEMENT OF THE SUPPLEMENTAL
ISSUES**

1. Whether the trial court erred by ordering Schechert to pay \$3,353 in legal financial obligations when he did not raise the issue during sentencing?

2. Whether the record supports a conclusion that Schechert would have a future ability to pay his LFOs?

II. STATEMENT OF THE CASE

The State relies on its statement of the case in its original brief, and as supplemented herein.

The trial court sentenced Schechert to 5 months in jail and imposed a total of \$3353 in legal financial obligations in the judgment and sentence (CP 59, 64):

\$500	Victim Assessment
\$1135	Court-appointed attorney fees
\$200	Filing Fee
\$100	DNA/Biological Sample Fee
\$1000	Mandatory fine for drug crimes RCW 69.50.430
\$500	SIU Kitsap County Sheriff's Office
\$100	Expert Witness Fund, Kitsap County

No restitution was ordered.

III. SUPPLEMENTAL ARGUMENT

A. THIS COURT SHOULD DECLINE TO REVIEW WHETHER OR NOT SCHECHERT WOULD HAVE A FUTURE ABILITY TO PAY LFOS WHEN HE DID NOT OBJECT BELOW.

For the first time on appeal, relying on *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), Schechert argues that the trial court erred when it order him to pay \$3353 in legal financial obligations (LFOs) when it did not conduct a particularized inquiry into Schechert's future ability to pay. \$800 of the \$3353 LFOs ordered were mandatory and therefore unaffected by the *Blazina* decision.¹ The Court should decline to consider the remaining fees of \$2553, because there was no objection at sentencing.

1. This Court should decline to review Schechert's unpreserved claim

In *Blazina*, the Washington Supreme Court specifically held that is not error for this Court to decline to reach the merits on a challenge to the imposition of LFOs made for the first time on appeal. *Blazina*, 182 Wn.2d at 832. "Unpreserved LFO errors do not command review as a matter of right under *Ford* and its progeny." *Id.*, 182 Wn.2d at 833 (*citing State v. Ford*, 137 Wn.2d 472, 478, 973 P.2d 452 (1999)). The decision to review

¹ Three of the LFOs ordered by the trial court were mandatory, and do not come within the reach of *Blazina*, which by its terms only applies to discretionary awards. See RCW 7.68.035(1)(a) (victim assessment); RCW 36.18.020(2)(h) (filing fee); RCW 43.43.7541 (DNA fee). These fees are mandatory, not discretionary. *State v. Lundy*, 176 Wn. App. 96, 102-103, 308 P.3d 755 (2013) ("For victim restitution, victim assessments, DNA fees, and criminal filing fees, the legislature has directed expressly that a defendant's ability to

is discretionary with the reviewing court under RAP 2.5. *Blazina*, 182 Wn.2d at 835. In other words, *State v. Duncan*, 180 Wn. App. 246, 327 P.3d 699 (2014), remains good law. That case held that a defendant's failure to object was not because the ability to pay LFOs was overlooked, rather the defendant reasonably waived the issue, considering "the apparent and unsurprising fact that many defendants do not make an effort at sentencing to suggest to the sentencing court that they are, and will remain, unproductive." *Duncan*, 180 Wn. App. at 250, 253.

RAP 2.5(a) reflects a policy which encourages the efficient use of judicial resources and discourages late claims that could have been corrected with a timely objection. *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988). *Duncan* appropriately balances the efficient use of judicial resources with fairness. Here, there was no objection from Schechert at sentencing. Nor is there obvious error in the record. This Court should decline to review this issue.

2. The record supports a conclusion that Schechert has the future ability to pay his LFOs

Schechert argues that because he was found indigent, it is likely that the trial court would not have ordered him to pay the listed LFOs. Neither RCW 10.01.160 nor the constitution requires a trial court to enter

pay should not be taken into account.").

formal, specific findings regarding a defendant's ability to pay discretionary court costs. *State v. Lundy*, 176 Wn. App. 96, 105, 308 P.3d 755 (2013). The State's burden for establishing whether a defendant has the present or likely future ability to pay discretionary LFOs is a low one. *Lundy*, 176 Wn. App. at 106.

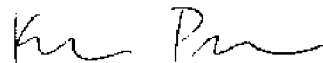
Schechert addressed his prospects for future employment at sentencing, telling the judge "I'm a veteran, got a bachelor of science degree. I do roofing on the side. I want to continue employment." RP (6/14) 471. Because the State's burden is low, the fact that Schechert is able-bodied with no apparent barriers to employment, the record is sufficient.

IV. CONCLUSION

For the foregoing reasons, and those set forth in the original brief of respondent, Schechert's conviction and sentence should be affirmed.

DATED August 7, 2015.

Respectfully submitted,
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